

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 861 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AHMED @ AKKA ALLAUDDIN SHAIKH THRO' ROSHANBEN W/O DETAINEU

Versus

COMMISSIONER OF POLICE

Appearance:

MR NB TIWARI for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein challenges the order of preventive detention dated 18th July, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act,

1985 (hereinafter referred to as 'the Act'). Along with the order of detention, the petitioner has also been served with the grounds of detention.

The petitioner is alleged to have committed acts of theft punishable under section 379 IPC, for which five offences have been registered in the month of January, 1998, in Shaher Kotda Police Station. On the basis of the papers of investigation of the above referred five cases, and on the basis of the information gathered from two witnesses, whose identity has been withheld, the petitioner is held to be a 'dangerous person' as defined in section 2 (c) of the Act.

The petition has been contested by the respondents. The Detaining Authority has filed its affidavit and has submitted that the genuineness of the witnesses and the veracity of their statements was verified by him personally, and he was of the opinion that their identity was required to be withheld.

Be it noted that the offences registered against the petitioner are petty cases of theft. Such incidents of theft are certainly prejudicial to the maintenance of law and order, however, the same can not affect the public tranquility, or the even tempo of living. Besides, the two witnesses have given statements in respect of the petitioner giving them threat and beating them in public places. The petitioner is also alleged to have wielded knife at the public gathered at the spot of the incident causing terror amongst the member of the public. The aforesaid incidents would certainly amount to breach of public order. It, however, appears that these statements have been recorded on 13th July, 1998 and 18th July, 1998 respectively. The order of detention has been made on 18th July, 1998 i.e. on the same day when the statement of the second witness was recorded. It hardly leaves any time for the Detaining Authority or anybody else to verify the genuineness of the statements made by the witnesses. In my view, the order of detention can not be based on mere statements of witnesses without verifying the truthfulness or genuineness of the said statements. In above view of the facts, the petitioner's detention under the Act can not be sustained.

The petition is, therefore, allowed. The impugned order of detention dated 18th July, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless required in some other case, be released forthwith.

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JOSHI